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whereupon plaintiff recovered judgment against him for the same and for the cancellation of the contract, which was affirmed on defendant's appeal. Pending the appeal, defendant continued to make and sell the baskets. *Held,* that plaintiff was entitled to recover the royalties in the contract on the baskets made pending the appeal; his failure to procure an injunction restraining their manufacture and sale during that time not precluding a recovery on the contract. *Bennett* v. *Iron Clad Mfg. Company* (1906), 96 N. Y. Supp. 968.

The court held that as the defendant by its acts assumed to treat the judicial annulment of the contract as erroneous, it ought not to be allowed to disclaim liability under it, saying: "The provision declaring the contract forfeited, being for the benefit of the plaintiff, was one which he might waive if he so desired and avail himself of his right of action thereunder so long as the defendant, by proceeding precisely along the terms thereof, conceded its validity to all intents and purposes, although disputing that fact as to a period of time prior to the one during which it was so operating under the contract." The court cited, as analogous in principle: *Union Mfg. Co. of Norwork* v. *Lounsbury et al.,* 41 N. Y. 363 (but see dissenting opinion); *Hayatt* v. *Ingalls,* 124 N. Y. 93; *Skinner* v. *Wood M. & R. M. Co.,* 140 N. Y. 217. In the two former cases the contract was terminated by the plaintiff himself; not by the court at the plaintiff's request; however, the last case above cited seems inapplicable, as the contract was not rescinded but simply enforced as to royalties thereunder to a certain date. *Denise* v. *Swett,* 68 Hun 188, supports the majority holding, but it was reversed in 142 N. Y. 602, and the latter case (while not referred to) supports the dissenting opinion of Spring, J., concurred in by Hiscock, J., to the effect that as the judgment abrogated the agreement between the parties, the plaintiff may have a remedy by injunction, or for an infringement of his patent, or to recover damages independently of the contract, but that he *cannot* "annul the agreement and still continue to reap the fruits of it."

RAILROADS—ESTABLISHMENT OF DEPOTS—AUTHORITY OF RAILROAD COMMISSION.—Petition for mandamus to compel the railroad company to erect a passenger depot in the town of Lexington. The railroad maintained a freight and passenger depot in the outskirts of the town. The state railroad commission, on proper petition and after a complete examination of the old depot, its surroundings and the site of the proposed depot, made the order now sought to be enforced by mandamus. *Held,* that the Code did not empower the commission to require a railroad to maintain in one town two detached depots, one for freight and one for passengers, and had reference only to the original establishment of depots and to the location of new ones desired by the company. *State* v. *Yazoo & M. V. R. R. Co.* (1906), — Miss. —, 40 So. Rep. 263.

The sections of the code construed were these: "Every railroad shall establish and maintain *such depots* as shall be reasonably necessary for the public convenience * * * and it shall be unlawful for any railroad to abolish or disuse any depot when once established * * * without the consent of the commission." "The commission may designate the site or location of any *new*

building or station-house which may be ordered, in cases where the site selected by the railroad's officials is inconvenient or inaccessible, but every depot must be located with due regard to the interest of railroad and public convenience." "The commission may require every railroad to provide sufficient depot, storage and platform facilities * * * and shall make such order thereon to secure the same as the facts and the public convenience may warrant." "The railroad commission shall have authority to cause to be instituted and prosecuted all proper legal proceedings by mandamus or otherwise to enforce the provisions of this act." The court indulges in grave forebodings and seems to believe that the granting of the mandamus would mean to insure to "any little town any number of depots to suit the changing convenience of a shifting population." But such inference is unwarranted. The statute gives due regard to the interest of the railroad and the public convenience. And plainly, if a depot is *reasonably* necessary to public convenience, whether in a city or a village, by the plain terms of the statute, such depot must be built. In strictly construing these provisions, the court apparently ignored that provision requiring the establishment and maintainance of such depots as are reasonably necessary for the public convenience, and, although it was conceded that the old station was not convenient, in fact grossly inconvenient, the mandamus was denied because the company already maintained a depot and did not choose to build another. The company was thus made the final judge, and if, after consulting its own interest, it has considered the erection of a second depot inadvisable, it may ignore the order made, fail to choose a depot site and the matter is closed, regardless of the rights of the public. The provisions are clear that *such depots* as are reasonably necessary for the public convenience must be built and the commission is empowered to compel the provision of sufficient depot facilities. If, however, in pursuance of such order the railroad select a site that is inconvenient or inaccessible, it may be selected by the commission. The conclusion must follow, unless the provision is to be nugatory, that if the railroad not only fails to select an accessible site but no site at all, then and in that case the commission may itself designate the location. There was one dissenting opinion, citing: *State* v. *R. R. Co.,* 18 Neb. 512, 24 N. W. 329, 52 Am. Rep. 424; *R. R. Commrs.* v. *Portland & O. C. R. Co.,* 63 Me. 270, 18 Am. Rep. 208.

RECORDING LAWS—DEED GIVEN AS MORTGAGE—NOTICE.—Complainant, whose mortgage had been recorded as a warranty deed on the entry book of deeds, brings suit to foreclose. No defeasance had been recorded. Defendant is a subsequent purchaser of the property without actual knowledge of the existence of the prior deed. *Held,* that such recording, in view of the statute, was no notice to defendant. *Grand Rapids National Bank* v. *Ford et al.* (1906), — Mich. —, 106 N. W. Rep. —, 13 Det. Leg. News, 10.

The Michigan statute requires the entry on separate books of all deeds and those "not intended as mortgages or securities," and all mortgages and all other deeds "intended as securities," and further declares that any conveyance "not recorded as provided in this chapter" shall be void as against